



Indiana Department of Education

SUPPORTING STUDENT SUCCESS

TO: Indiana State Board of Education

FROM: Becky Bowman, Director, Office of Legal Affairs

RE: In Re the Matter of N.B. and the Franklin Community School Corporation
Right to Attend School, Cause No. 0903003

DATE: May 28, 2009

The following memo addresses an objection filed in response to the Hearing Examiner's recommended order in the Matter of N.B and the Franklin Township Community School Corporation ("FCSC").

The Student currently attends an accredited nonpublic high school in Indianapolis, but maintains legal settlement within the attendance boundaries of FCSC. The Student sought to enroll in summer school at FCSC for 9th grade English. The Student had previously failed the first semester of 9th grade English at the accredited nonpublic school. FCSC informed the Student that summer school is only available to students currently enrolled at FCSC. Student appealed to the State Board of Education for a hearing on the matter.

After the hearing request, but before the hearing, FCSC claimed a new reason for denial. While the Student had failed first semester English 9 at the accredited nonpublic school, the Student had passed the second semester. FCSC asserted that their summer class was tailored only to students who failed the second semester English 9, not a full English 9 remediation. The summer class is "taught at an accelerated rate due to the familiarity of curriculum the student would already possess" as a current FCSC student. Because the Student already passed the second semester, FCSC believes the summer course is not appropriate to meet the Student's first semester needs.

The accredited nonpublic high school reviewed the curriculum of FCSC's summer English 9 course and believes that the Student will not be repeating the second semester curriculum. Accordingly, the accredited nonpublic school will accept the completion of the summer FCSC course as appropriate remediation to the Student's first semester deficit.

According to the Indiana Department of Education State Approved Course Titles and Descriptions, ninth grade English is a required course for high school graduation, including two semesters for one credit per semester. The state standards are set and specified for the entire two semesters on the whole, rather than by individual semester, and require no prerequisites.

The General Assembly, by statute, requires all Indiana public schools to be open to students until "they complete their course of study, subject to the authority vested in school officials by law." I.C. 20-33-1-2. The Indiana Legislature has specifically provided for funding support to public

schools for nonpublic school students who enroll part-time in a public high school. IC 20-43-4-6.

Following an evidentiary hearing, the Hearing Examiner found that FCSC failed to demonstrate adequate reasons for denying summer course enrollment to the Student. Because state standards are not delineated by semester for the particular course, the exact curriculum taught each semester is determined by the individual each separate school. The Student demonstrated that the accredited nonpublic school will accept the summer course as a compliment to their full English 9 standards and curriculum. Because no other adequate reason exists to deny enrollment and student maintains legal settlement within FCSC's district, the Hearing Examiner held that the Student may attend the summer course at FCSC.

On May 28, 2009, FCSC notified the State Board of Education of its objection to the Hearing Examiner's Findings of Fact, Conclusions of Law and Recommended Order¹. The FCSC raises nine objections as follows:²

- Facts were omitted from the Procedural History.
- Finding of Fact #4 is not supported by a preponderance of the credible evidence.
- Finding of Fact #5 is not supported by the evidence.
- Finding of Fact #12 is not supported by the evidence.
- Finding of Fact #13
- The Discussion erroneously characterizes FCSC's denial of enrollment as a matter of the Student not meeting course prerequisites.
- Conclusion of Law #4 is erroneous and misstates the current law.
- Conclusion of Law #5 erroneously applies I.C. 20-33-1-1.
- Conclusion of Law #7 erroneously fails to state that the right to attend school is not without limitation.

The Board set the matter for oral argument to take place on June 3, 2009.

¹ A copy of the Findings of Fact, Conclusions of Law, and Recommended Order is attached.

² A complete copy of the School Corporation's Objections is attached.

BEFORE THE INDIANA STATE BOARD OF EDUCATION

In Re the Matter of:)	Cause No.: 0903003
)	
N.B.)	Open to the Public

Right to Attend School Pursuant to
I.C. 20-26-11-15

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

Procedural History

Petitioner resides within the attendance area of Respondent Franklin Township Community School Corporation. He is currently in the tenth grade at an accredited nonpublic high school in Indianapolis. On March 27, 2009, Petitioner's request for hearing was received by the State Board Administrator. The undersigned was appointed as hearing examiner and the parties were so notified on March 31, 2009. Petitioner's father gave written consent for the hearing procedures to be open to the public. The parties provided the hearing examiner with available dates for a hearing. The hearing was scheduled for May 12, 2009. The parties were notified of the hearing date and advised of their rights by notice dated April 14, 2009.

On April 17, 2009, Respondent requested a subpoena for the production of records from the Student's nonpublic school, a nonparty in the hearing. John S. Mercer entered his appearance on behalf of Petitioner on April 30, 2009. Petitioner requested a subpoena for the production of documents from Respondent. On May 6, 2009, Andrew A. Manna notified the hearing examiner that he had been retained to represent the School. He requested a continuance due to his unavailability on May 12, 2009, and also requested an extension of time to respond to the Student's discovery request. On May 7, 2009, Roger A. Young also filed an appearance on behalf of the School. On May 15, 2009, Respondent requested a subpoena for the testimony and production of documents from the nonpublic school. All requested subpoenas were issued as requested.

On May 8, 2009, the hearing examiner issued an order granting Respondent's request for a continuance, and also granting Respondent's request for additional time until May 13, 2009 to respond to the subpoena. The parties were notified that the hearing would be conducted on May 19, 2009, in the offices of the Indiana Department of Education.

Petitioner was represented by John S. Mercer, Esq. Both of Petitioner's parents were present. Respondent was represented by Andrew A Manna, Esq. and Roger A. Young. The Superintendent of Franklin Township Community School Corporation was present on behalf of Respondent. A brief pre-hearing conference was conducted prior to the start of the hearing during which time the hearing examiner advised the parties of their hearing rights and appeal procedures. Witnesses were sworn and testified. Petitioner offered exhibits one through seven, and nine, which were admitted without objection. Respondent offered exhibits one through thirteen in a binder consisting of 145 pages which were admitted without objection.

After consideration of the testimony and exhibits, the hearing examiner makes the following findings of fact, conclusions of law, and recommended orders:

Findings of Fact

1. Petitioner has legal settlement within the attendance boundaries of Franklin Township Community School Corporation, Respondent herein.
2. Petitioner attends Roncalli High School, an accredited parochial nonpublic school, and is nearing the end of his sophomore year.
3. Petitioner did not pass the first semester of English during his freshman year, 2007-2008. He did pass the second semester of 9th grade English.
4. Petitioner's parents sought to enroll him in summer school in Respondent school district during the summer of 2008 to take 9th grade English. Respondent advised Petitioner that the summer program was only available to students currently enrolled in Respondent's schools. Nonpublic school students were not permitted to enroll.
5. Early in the 2008-2009 school year, Petitioner's parents sought information about enrolling Petitioner during the summer of 2009 to take 9th grade English.
6. On March 12, 2009, Petitioners were advised by e-mail that the summer school program would only be available to currently enrolled Franklin Community School students.
7. After Petitioners requested a hearing and Respondent's superintendent had an opportunity to review Petitioner's transcript, the Superintendent sent Petitioners a letter giving different reasons for denying Petitioner's enrollment. The Superintendent stated that "[t]he course has been designed for students that have failed the second semester English 9 because it was taught at an accelerated rate due to familiarity of curriculum the student would already possess. The credit that will be issued from our high school at the successful completion of this course will be English 9 second semester."
8. The Superintendent further indicated she had been fully prepared to offer Petitioner entrance into English 9 if he needed second semester credit for graduation. Because Petitioner had passed second semester of English 9, the Superintendent did not believe the course was appropriate to meet his needs.

9. According to the Indiana Department of Education State Approved Course Titles and Descriptions, ninth grade English is a required course for high school graduation. It is a two-semester course with one credit per semester. It is recommended for ninth grade. There are no prerequisites listed in the State standards.
10. Respondent's course description for English 9 also indicates this course is a two-semester, two credit course for 9th grade students. There are no prerequisites.
11. Although state standards have been developed for ninth grade English, the standards are specified for the two-semester course as a whole and not by semester.
12. The chairman of the English department for Roncalli High School wrote the standards for that school, and is familiar with the State standards. She reviewed the curriculum and standards of Respondent's 9th grade English course offering for the summer. Petitioner would not likely be repeating the same work he did in the second semester of 9th grade English at Roncalli. Respondent's English 9, second semester course offering during the summer has been determined acceptable to meet his English 9 deficit at Roncalli.
13. There is not a prescribed literature for first semester as opposed to second semester English 9. The exact curriculum taught in each semester is determined by each school and not dictated by the State.

Discussion

Respondent noted at the start of this hearing that the issue had changed since the initial request for hearing. Initially, Respondent denied Petitioner's request to enroll in the summer school program because he was enrolled in a nonpublic accredited school. Respondent's counsel correctly advised Respondent that enrollment could not be denied on that basis. Respondent then characterized this as a matter of home rule, arguing that Respondent had the right to determine its course offering for summer school, and the prerequisites to take a course. However, there are no prerequisites indicated in Respondent's course description or in State standards for English 9. Respondent's imposition of a prerequisite in this instance is a requirement that only Respondent's students will be accepted into the program. Nonpublic school students will be denied enrollment.

Conclusions of Law

1. The Indiana State Board of Education (SBOE) has jurisdiction to determine the right to attend school in any school corporation. Indiana Code 20-26-11-15(a)(3).
2. Petitioner has legal settlement within Respondent school corporation.
3. Under Article 8, §1 of the Indiana Constitution, the General Assembly has the duty to establish "a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all." The General Assembly has the power to

determine how and by what instrumentalities Indiana's common school² system is to be administered. Keller v. Reynard, 223 N.E.2d 774 (Ind.App. 1967). Statutory enactments passed under this constitutional authority are to be liberally construed for the encouragement of knowledge and learning. Patterson v. Middle Sch. Township, 98 N.E. 440 (Ind.App. 1912).

4. The General Assembly, by statute, requires all Indiana public schools to be open to students until "they complete their course of study, subject to the authority vested in school officials by law." I.C. 20-33-1-2.
5. The following is the public policy of the state:
 - (1) To provide equal, nonsegregated, nondiscriminatory educational opportunities and facilities for all, regardless of race, creed, national origin, color, or sex.
 - (2) To provide and furnish public schools and common schools equally open to all and prohibited and denied to none because of race, creed, color, or national origin.
 - (3) To reaffirm the principles of the Bill of Rights, civil rights, and the Constitution of the State of Indiana.
 - (4) To provide for the state and the citizens of Indiana a uniform democratic system of public and common school education.
 - (5) To abolish, eliminate, and prohibit segregated and separate schools or school districts on the basis of race, creed, or color.
 - (6) To eliminate and prohibit segregation, separation, and discrimination on the basis of race, color, or creed in the public kindergartens, common schools, public schools, career and technical education centers or schools, colleges, and universities of Indiana.

As added by P.L.1-2005, SEC.17. Amended by P.L.234-2007, SEC.117.
IC 20-33-1-1.
6. It is the policy of the state that the state recognizes that nonpublic schools provide education to children in Indiana; has an interest in ensuring that all Indiana children are well educated in both curricular and extracurricular programs; and should facilitate the transferability of comparable academic credit between appropriate nonpublic schools and state supported educational institutions. I.C. 20-19-2-10.
7. The authority to determine the right to attend school is vested in the Indiana State Board of Education. I.C. 20-26-11-15(a)(3).
8. The Indiana Legislature has specifically provided for funding support to public schools for nonpublic school students who enroll part-time in a public high school. IC 20-43-4-6.
9. Respondent's proffered reasons for denying enrollment to Petitioner are that he already passed second semester of English 9 (so this course would not meet his need), and that the course is only available to those students failing the course at Franklin Community High School. English 9 is a two semester course. There is no State standard for what is

²"Common Schools" is synonymous with "public schools" and includes high schools. Chandler v. South Bend Comm. Schs., 312 N.E.2d 915 (Ind.App. 1974).

taught during the first semester versus the second semester, nor can that be determined by the curriculum guides of either school. Whether the course offering this summer will meet the deficit of Petitioner is more properly determined by the school that will ultimately be awarding the high school diploma. If Petitioner passes the English 9, second semester course this summer, it will be up to Roncalli High School to determine whether Petitioner has met the ninth grade English requirements for graduation. To the extent that Respondent's criteria for selecting students eligible to enroll in its summer school program denies enrollment to nonpublic school students having legal settlement within Respondent's school district, it is contrary to law.

RECOMMENDED ORDER

Respondent shall permit Petitioner to enroll in English 9 during the 2009 summer session.

Dated: May 22, 2009

Dana L. Long, Hearing Examiner for the
State Board of Education

APPEAL RIGHT

Any party wishing to file objections to this recommended decision may do so in writing within fifteen (15) calendar days from the receipt of this order. The basis of any objections must be stated with particularity. A party must cite to any Finding of Fact, Conclusion of Law, or Order with which the party takes exception. Objections must be mailed to Mr. Jeffery P. Zaring, State Board Administrator, Indiana Department of Education, Room 229, State House, Indianapolis, Indiana 46204-2798. This order will become final after fifteen (15) calendar days with no further action required by the Indiana State Board of Education unless objections are filed or the Board, by majority vote, decides to set this cause for oral argument. In either situation, you will be advised of the date the Board will consider the case.

Any party filing objections or responding to same must provide a copy of such written objections or written responses to the representative of the other party. Failure to do so may result in dismissal of your appeal.

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cc: Jeffery P. Zaring
File